Sustainable Forestry Fund

Background Discussion Paper
May 20, 1999

NS Dept. of Natural Resources

draft

Introduction

The Government's 1997 Position Paper: *Toward Sustainable Forestry* and the subsequent amendments to the Forests Act make provision for a Sustainable Forestry Fund. It is the opinion of the Department of Natural Resources that separate regulations governing the operation of the Fund are not essential at this time to achieve the objectives of the Forest Act and any regulatory needs will be addressed by the Wood Sustainability Regulations. This Discussion Paper has been prepared as background information to foster a common understanding of the role of the Sustainable Forestry Fund and to aid in the public review of the Wood Sustainability Regulations

On the Nature of the Sustainable Forestry Fund . . .

> *19A (1) There is hereby established a fund to be known as the Sustainable Forestry Fund for the purpose of funding programs to encourage the sustainable use of privately owned forest land.*
>
> *Forests Act*

The new Section 19(A) of the Forests Act makes provision for a Sustainable Forestry Fund (Appendix A). The rationale for establishing the Fund is to provide at least one universal method for Registered Buyers to satisfy one of the requirements under the Wood Sustainability Regulations. Any limitation or obligation on a Buyer to use the Fund will be described in the regulations concerning the Wood Acquisition Plan process.

The Fund acts as a bank account to hold the deposits made into it. Deposits will be made only with the joint agreement of a contributor and the Minister of Natural Resources. The Forests Act does not create any automatic means for a mandatory levy, checkoff or any other income stream that would be automatically deposited into the fund.

The money in the Fund itself is under the custody of the Minister of Finance.

It is anticipated that the Sustainable Forestry Fund will be established as a Special Fund under the provisions of the Provincial Finance Act (Appendix B) for a special purpose, and will be managed in accordance with the Finance Act's provisions. It must be specifically established at the appropriate time through a separate decision of Cabinet.

> *2(n) "special fund" means money received or held by or on behalf of the Province in trust for or on account of any person or in trust for or on account of any special purpose and includes the Public Service Superannuation Fund, the Nova Scotia Teachers Pension Fund, sinking funds, Public Debt Retirement Fund, together with the income earned on the investment of such funds, and includes any other fund or money which the Governor in Council from time to time designates as a special fund and includes the authority to make payments including interest out of special funds in accordance with the terms and conditions of any trust, contract, undertaking, statute or order in council establishing the special fund.*
>
> *Finance Act R.S., C. 365, S. 2; 1994, c. 29, s. 1.*

Money in the Fund is held distinct from all other public money received by the Government and may only be used for the purpose for which it was received.

> *(l) "public money" means all money held or received by any person for or on behalf of Her Majesty in right of the Province, excluding all special funds, except sinking funds and the Public Debt Retirement Fund;* *Finance Act R.S., C. 365, S. 2; 1994*

The money in the fund must be accounted for separately by the Government. It will be deposited into a bank or invested in accordance with investment policies (see following sections).

On Deposits into the Fund . . .

> *19A (2) There shall be paid into the Sustainable Forestry Fund*
>
> *(a) contributions for silviculture programs on privately owned forest lands from buyers of forest products or producers where an agreement providing for a contribution has been entered into with the Minister in accordance with an approved wood acquisition plan;....* *Forests Act*

The origins of the deposited money will be from each approved wood acquisition plan. Deposits may only be made with the consent of the Minister of Natural Resources. This could be both up-front, planned deposit upon initial approval of an annual wood acquisition plan and where the Buyer has chosen the Fund option or possibly subsequent default payments for failure to fully implement a silviculture treatment program required under a wood acquisition plan. "Buyers or Producers" will be taken to mean both the singular and plural sense. The terms might equally refer to an association, cooperative, bargaining unit or partnerships for either group.

All of the monies collected by the Minister of Natural Resources under the Wood Sustainability Regulations will be immediately deposited into the Fund.

> *19A (2) There shall be paid into the Sustainable Forestry Fund . . . (b) income accruing to the Fund;*
> *Forests Act*

The only income anticipated will be investment income earned on the deposits. Should the balance in the fund exceed immediate cash requirements for a current year, the surpluses may be invested by the Province.

> ***Investment standards***
> *35 Subject to Section 36, the Minister [of Finance] shall, for the sound and efficient management of . . . any special funds, establish and adhere to investment policies, standards and procedures that a reasonable and prudent person would apply in respect of a portfolio of investments and loans to avoid undue risk of loss and to obtain a reasonable return.*
> *Finance Act 1994, C. 29, S. 14.*

The investment standards are as established and administered by the Treasury Division of the Department of Finance. In discussion with the Department of Natural Resources the immediate cash flow requirements would be established and any surplus funds would be invested in high quality interest earning bonds of appropriate (likely short) terms. No high risk investments are made.

Although it is expected that deposits arising from Wood Acquisition Plans will be the normal source of deposits, the Forests Act enables other potential depositors or mechanisms to be established in the future.

> *19A(2) There shall be paid into the Sustainable Forestry Fund . . . (c) in accordance with the Provincial Finance Act, money that accrues from any programs of the Province, including programs conducted under agreements with other governments, entered into for any of the purposes for which the Fund is established.*
> *Forests Act*

Where might such other deposits come from? There is no immediate expectation that there will be any, but some possibilities might be:

- Other levels of government who wish to incrementally or jointly fund forestry activity to stimulate employment through established silviculture programming.
- Other business's that might not otherwise be captured under the Wood Acquisition Plan provisions. Suppose it became advantageous for utility companies to fund forest treatments as a means to earn Carbon Credits, using the Fund may simplify administration.
- Buyers or suppliers might for a time operate their own program, establish a separate, private account and accumulate a cash balance. At some point they may mutually wish to end that program to enable a business to be wound-up or reorganized. The Minister could agree to receive the balance of the private fund into the Sustainable Forestry Fund.
- The Government might decide at some future date that certain fines, recoveries or forfeitures could be directed into the fund.

<u>On if there will be any Government money in the Fund . . .</u>

Payment to the Province by Buyers satisfies an obligation from the Wood Sustainability Regulations. It is held in the Fund for a special purpose, not in trust for a special person. As a result the government is the sole administrator of the fund. The Government may make a separate decision that it also wishes to cost-share the obligation with Buyers. If government so decides, than has to determine if it wishes to match funds either when the money is deposited or withdrawn, which may be in different years.

On how the money in the Fund may be used . . .

> *19A(3) Money may only be expended from the Sustainable Forestry Fund in accordance with the Provincial Finance Act and only for the purpose of funding silviculture programs on privately owned lands.* *Forests Act*

The money may only be used to fund silviculture on private lands within the Province.
It may not be used for Crown lands.
It may not be used for elements of private land programming that do not directly support a silviculture treatment program.

The value of contributions into the Fund will have been based on estimates and forecasts, through the Wood Sustainability Regulation provisions, that minimum amounts of silviculture must be completed, on certain private land tenures, to ensure that wood harvest levels are sustainable. If the funds were used for any other purpose, then those forecasts cannot be accomplished.

If, by the end of any fiscal year, the Department of Natural Resources has not expended money removed from the Fund for the specified purpose, the surplus will be returned to the Fund. This provision will not apply to the Ordinary Estimates for the Department which may be allocated to the same or similar activity.

By choosing the Fund option, Buyers relieve themselves of the burden of operating a private land silviculture program, and create an obligation for the Minister of Natural Resources to either operate a program or make other provisions for silviculture treatments. To meet our objective of ensuring that the harvest remains' sustainable, it is incumbent on the Province to complete the required silvicultural treatments as soon as possible. Therefore, unless supported by other analysis or information, if the balance in the Fund were to continuously increase over time, it would be suggestive that the policy is not meeting its objectives (of having treatments conducted) or it might also be indicative of a need to reassess that rate at which the required deposits are calculated.

If the Province is not prompt in using the money in the fund, costs might rise beyond the rates assumed when the assessment was calculated and the required area of treatment will not be accomplished.

While the money in the Fund will be managed by the Minister of Finance, the 'silviculture program' for private lands will be managed by the Minister of Natural Resources.

The Department of Natural Resources will plan for its private land silviculture program through its normal work planning and budgetary processes. DNR's annual budget submission will show as a line item the gross expenditure, the amount to be recovered from the Fund, and the net expenditure for the program in any fiscal year. The Department of Natural Resources will, in all probability, be the only one actually paid directly out of the Fund. That is, authority to expend a specified total amount will be placed in the Department of Natural Resources annual budget through a transfer from the Department of Finance.

Can the Fund be used for administration?

Many have asked whether the fund can be used to finance the administration of silviculture programs and not just on-the-ground costs. Any silviculture program must have some element of administrative overhead. If it is not provided for, the program may become inoperable, ineffectual or subject to abuses. There is equal concern that administrative costs can become excessive. Administrative costs can reasonablely be considered part of the incremental costs of a 'program'. But the money will only be there to pay for them, if administrative expenses are part of the original estimates, forecasts and agreement when the deposits are first made.

The required contribution rates established under the Wood Sustainability Regulations will include an allowance for the direct administration expenses required to properly plan and operate a silviculture treatment program. The Department of Natural Resources will be entitled to charge against the Fund the same administration allowance that it will recognize for privately operated treatment programs. If it incurs costs beyond that limit, they must be funded from its regular budget.

On how much money might there be in the Fund . . .

There is no right answer to this question. The Fund is intended to be one option available to Buyers under the Wood Sustainability Regulations. If many Buyers/Producers choose this option, the Fund might receive millions of dollars in annual deposits. If none of the Buyers/Producers choose this option, there will be no money in the Fund nor would there need to be, as those Buyers and Producers will have made other provisions for silvicultural treatments.

On obtaining information about the Fund . . .

The money in the fund must be accounted for by the Government.

> ***Public Accounts***
> ***9 (1) The Deputy Minister*** [of Finance] ***shall prepare an annual statement, called the "Public Accounts", as soon as practicable after the termination of each fiscal year and shall submit it to the Minister*** [of Finance].
> ***Content of Public Accounts***
> ***(2) The Public Accounts shall show . . . (b) the state of the Consolidated Fund and the various special funds under the control and management of the Province; . . .***
> *Finance Act R.S., C. 365, S. 9; 1994*

However, neither the annual reports of the Department of Finance nor the Public Accounts Book reveal the itemized balance for each of the many small funds administered by Finance. They are reported as an aggregate for all funds. This is not considered secret and information would be provided in response to a direct inquiry. However to improve the accountability for the Sustainable Forestry Fund, the Department of Natural Resources could publish in its own annual report the total deposits, withdrawals and balance of the Fund, each fiscal year.

Payments from individual Buyers may be considered commercially sensitive information. Requests for such information may need to be reviewed in accordance with the Freedom of Information and Protection of Privacy Act.

Information concerning payments to landowners, contractors or other service providers for the silviculture program financed by the fund would be governed by the standard policies for the department. All payments to persons of more than $5,000 are published in the Supplement to the Public Accounts of the Province.

Appendix A

Bill 5 1998,
An Act to Amend Chapter 179 of the Revised Statutes, 1989, the Forests Act

Excerpts pertaining to Sustainable Forestry Fund

19A (1) There is hereby established a fund to be known as the Sustainable Forestry Fund for the purpose of funding programs to encourage the sustainable use of privately owned forest land.

(2) There shall be paid into the Sustainable Forestry Fund

(a) contributions for silviculture programs on privately owned forest lands from buyers of forest products or producers where an agreement providing for a contribution has been entered into with the Minister in accordance with an approved wood acquisition plan;

(b) income accruing to the Fund; and

(c) in accordance with the Provincial Finance Act, money that accrues from any programs of the Province, including programs conducted under agreements with other governments, entered into for any of the purposes for which the Fund is established.

(3) Money may only be expended from the Sustainable Forestry Fund in accordance with the Provincial Finance Act and only for the purpose of funding silviculture programs on privately owned lands.

Appendix B

Provincial Finance Act
CHAPTER 365 OF THE
REVISED STATUTES, 1989
amended 1992, c. 8, s. 32; 1993, c. 37; 1994, c. 29; 1995, c. 2; 1996, c. 5; 1997, c.3, ss. 11, 12; 1998, c. 5

Excerpts pertaining to Special Funds

Interpretation

2 In this Act,
(a) "appropriation" means an authorization by or under an Act of the Legislature for an expenditure of money;
....
(c) "Consolidated Fund" means all public money received by the Minister except special funds;
....
(e) "department" means any department, board, commission, foundation, agency, association or other body of persons, whether incorporated or unincorporated, all the members of which, or all the members of the board of management or board of directors of which,
....
(g) "fiscal year" means the period from and including the first day of April in one year to and including the thirty-first day of March in the next year;
(h) "Minister" means the Minister of Finance;
(i) "money" includes negotiable instrument;
....
(k) "Province" means Her Majesty in right of the Province;
(l) "public money" means all money held or received by any person for or on behalf of Her Majesty in right of the Province, excluding all special funds, except sinking funds and the Public Debt Retirement Fund;
....
(n) "special fund" means money received or held by or on behalf of the Province in trust for or on account of any person or in trust for or on account of any special purpose and includes the Public Service Superannuation Fund, the Nova Scotia Teachers Pension Fund, sinking funds, Public Debt Retirement Fund, together with the income earned on the investment of such funds, and includes any other fund or money which the Governor in Council from time to time designates as a special fund and includes the authority to make payments including interest out of special funds in accordance with the terms and conditions of any trust, contract, undertaking, statute or order in council establishing the special fund. R.S., c. 365, s. 2; 1994, c. 29, s. 1.

Public Accounts

***9 (1)** The Deputy Minister shall prepare an annual statement, called the "Public Accounts", as soon as practicable after the termination of each fiscal year and shall submit it to the Minister.*

Content of Public Accounts

***(2)** The Public Accounts shall show*
(a) the state of the public debt;
(b) the state of the Consolidated Fund and the various special funds under the control and management of the Province;
(c) an account of all sums received, paid, borrowed or repaid under this Act;

(d) the total amount of all obligations, debts or claims due the Province canceled and released in whole or in part under this Act;
(e) the several sums appropriated by the Governor in Council under Sections 28 and 29, together with the date of the order in council appropriating each sum and the service or purpose for which each sum was appropriated;
(f) such other accounts and matters as are required to show what the assets and liabilities of the Province are at the date of such statement.

Period of Public Accounts

(3) The Public Accounts shall be for the period of the fiscal year. R.S., c. 365, s. 9.

Deposit of public money received

17 (1) All public money received by the Minister shall be deposited to the credit of the Minister in the Consolidated Fund or the appropriate special fund.

Authorized expenditures from Consolidated Fund

(2) Except as otherwise provided, where any expenditure is authorized by any Act such expenditure may be made from the Consolidated Fund.

Accounts with bank

(3) The Minister shall establish accounts with such banks as he designates for the deposit of public money. R.S., c. 365, s. 17.

Interest on overdue debt owed to Province

19 Where no provision is made in an enactment or an agreement respecting the payment of interest on a debt due to the Province and unpaid on the thirtieth day after the debt becomes due, the Governor in Council may determine a rate of interest which shall be recoverable as part of the debt. R.S., c. 365, s. 19.

Set-off by Province of debt due Province

32 (1) Where, in the opinion of the Minister, a person is indebted to the Province in any specific sum of money, the Minister may authorize the Deputy Minister to retain by way of deduction or set-off the amount of such indebtedness out of any sum of money that is or may be due and payable by the Province to such person.

Investment standards

35 Subject to Section 36, the Minister shall, for the sound and efficient management of any sinking fund, the Public Debt Retirement Fund, the Consolidated Fund and any special funds, establish and adhere to investment policies, standards and procedures that a reasonable and prudent person would apply in respect of a portfolio of investments and loans to avoid undue risk of loss and to obtain a reasonable return. 1994, c. 29, s. 14.